

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Public Works	(2) MEETING DATE 9/10/2013	(3) CONTACT/PHONE Tim Tomlinson, Development Services Division (805) 781-5271	
(4) SUBJECT Hearing to consider a request by Robert and Melanie Tucker for a variance granting modification of special construction standards in a flood hazard zone and submittal of a resolution denying the requested variance. District 5.			
(5) RECOMMENDED ACTION It is our recommendation that your Honorable Board adopt the attached resolution denying the requested variance.			
(6) FUNDING SOURCE(S) N/A	(7) CURRENT YEAR FINANCIAL IMPACT N/A	(8) ANNUAL FINANCIAL IMPACT N/A	(9) BUDGETED? N/A
(10) AGENDA PLACEMENT { } Consent { } Presentation {X} Hearing (Time Est. <u>60 mins.</u>) { } Board Business (Time Est. <u> </u>)			
(11) EXECUTED DOCUMENTS {X} Resolutions { } Contracts { } Ordinances { } N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: N/A { } 4/5th's Vote Required {X} N/A	
(14) LOCATION MAP Attached	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY {X} N/A Date:	
(17) ADMINISTRATIVE OFFICE REVIEW <i>Nikki J. Schmidt</i>			
(18) SUPERVISOR DISTRICT(S) District 5 -			

Reference: 13SEP10-H-1

County of San Luis Obispo



TO: Board of Supervisors

FROM: Public Works

Tim Tomlinson, Development Services Division

VIA: Dave Flynn, Deputy Director of Public Works

DATE: 9/10/2013

SUBJECT: Hearing to consider a request by Robert and Melanie Tucker for a variance granting modification of special construction standards in a flood hazard zone and submittal of a resolution denying the requested variance. District 5.

RECOMMENDATION

It is our recommendation that your Honorable Board adopt the attached resolution denying the requested variance.

DISCUSSION

Robert and Melanie Tucker are requesting a waiver of the County's Land Use Ordinance (22.14.060 D. 1. a.) which limits placing new structures in a floodplain or floodway. A portion of this ordinance states:

"No construction or grading shall limit the capacity of the floodway or increase flood heights on existing structures unless the adverse effect of the increase is rectified to the satisfaction of the Director of Public Works. In no case shall flood heights be increased above that allowed under the Federal Flood Insurance Program."

Background / History

In April 2012, a Code Enforcement Case (COD2011-00677) was initiated against the Tuckers when an un-permitted structure was discovered on their property. This new structure is a metal building located on a pre-existing concrete foundation and is currently used as a commercial dog kennel. Per local ordinance, an un-permitted structure requires permitting to allow its existing use to continue in compliance with local building codes and ordinances.

In an attempt to remedy the code enforcement action, the Tuckers applied for a building permit (PMT2012-01817) for the new kennel building. During the building permit review process, it was discovered that the new structure is located within the 100-year flood way of the Salinas River. In a large storm event, the new structure would be inundated by floodwaters of the Salinas River. Furthermore, as this new structure is also located in the "Regulatory Flood Way" (rather than just merely in the "floodplain") the new structure would be subjected to the river forces, suffer significant structural failure and be partly or entirely washed downstream.

In order to prevent these hazards, County ordinance (22.14.060.D.4) requires the applicant's engineer to certify the floor of the structure is either one foot above 100 year flood level or that the structure is flood proofed to "... *withstand the flood depths, pressures, velocities, impact and uplift forces, and other forces associated with a 100-year flood.*" The applicant has not submitted this certification from a registered civil engineer.

Federal Regulations

The County's Land Use Ordinance implements the requirements of the National Flood Insurance Program (NFIP), which is administered by the Federal Emergency Management Agency (FEMA). The intent of the National Flood Insurance Program is to lessen the threat to life and property attendant to structures built in a Flood Hazard Zone. One primary facet of this program requires that no new structures or other impairments to flow be constructed within the Regulatory Flood Way. The Regulatory Flood Way must be preserved to adequately conduct run off in the watershed during the larger storms.

While the NFIP allows for a few exceptions, the criteria indicated for the exceptions have not been satisfied. The new structure will raise the flood level in the Regulatory Flood Way and pose a safety threat to downstream properties. The need for the requested variance also fails to provide compelling and extraordinary proof (per FEMA requirements; CFR Title 44, Chapter 1, Section 60.6) that denial would result in exceptional hardship to the applicant. These are listed and more fully explained in the attached resolution.

Were this structure not located within the Regulatory Flood Way, there might be measures that could legitimize its construction and also provide for public safety. However, the specific requirements of the NFIP regarding the Regulatory Flood Way do not afford us the opportunity to pursue those measures.

Other options, such as flood proofing or relocating the building on this site, are not feasible.

Therefore, staff recommends this variance be denied due to the findings of its location in the Regulatory Flood Way, increased flood heights due to its construction, attendant threats to public safety (in a flood event, the structure could become debris, and cause downstream damage), and lack of exceptional hardship (as defined by FEMA).

OTHER AGENCY INVOLVEMENT/IMPACT

The Department of Planning and Building is also involved in flood plain management as they implement most of the provisions of the Land Use Ordinance. They issue building permits and inspect construction after the application is reviewed for flood hazard concerns by the Public Works Department. The two departments act jointly to carry out the requirements of FEMA and the NFIP.

FINANCIAL CONSIDERATIONS

There should be no cost to the County associated with the denial of this waiver. However, approval of a variance could result in a surcharge of \$50 annually on all flood insurance policies in the County or, ultimately, suspension from the NFIP which would result in negative economic impacts to those property owners currently in the program.

RESULTS

Denial of the requested variance will require the applicant to apply for a demolition permit through the Planning and Building Department to remove their illegally constructed structure so that they will become in compliant with County ordinances and the NFIP.

Reference: 13SEP10-H-1

File: Flood Hazard Waivers TJT

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ATTACHMENTS

1. Vicinity Map
2. Waiver Request from the Tuckers
3. Resolution Denying a Variance and Exception Waiving Certain Construction Standards of the Land Use Ordinance in a Flood Hazard Area